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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8

9 QIN CHEN,

No. C 07-2188 WDB

10 Petitioner,

ORDER RE CROSS-MOTIONS FOR
SUMMARY JUDGMENT

11 v.

12 MICHAEL CHERTOFF, Secretary,
13 Department of Homeland Security,
et al.,

14 Respondents.
15 _____/

16
17 The Court has devoted considerable effort to analyzing the parties' cross-
18 motions for summary judgment. As the issues presented are appropriate for decision
19 without oral argument, the motions are deemed submitted.

20 For reasons the Court will set forth in detail if this case is not rendered moot by
21 agency action during the first few months of 2008, the Court DENIES Respondents'
22 motion for summary judgment.

23 At this juncture, the Court declines to rule on Petitioner's motion for summary
24 judgment. As we understand the relevant law, USCIS could not take favorable action
25 on Petitioner's application until a visa could be issued to Petitioner. Petitioner
26 contends that she is in a group (first preference category) for which visas are available
27 now. Respondents, on the other hand, contend that Petitioner is in the second
28 preference category for which no visas will be available until at least January

1 of 2008. The parties have not presented the Court with sufficient evidence or legal
2 authority to resolve this dispute. That being the situation, we hereby permit the
3 parties to engage in discovery, commencing immediately, that is relevant to
4 determining whether Petitioner is in a group that is eligible for visas now or, if not,
5 when visas would be available for the group in which she is appropriately categorized
6 for this purpose. Petitioner may file a motion for summary judgment on this issue any
7 time before February 11, 2008, if she has developed sufficient evidence to support
8 such a motion.

9 If Petitioner has not filed a motion on the issue of visa availability by February
10 11, 2008, and if USCIS has not by then made a decision on her underlying application
11 for adjustment of status, then by February 19, 2008, the parties must file a joint case
12 management statement that appraises the Court of any relevant developments that have
13 occurred between now and then. In this statement, the parties must set forth their
14 position or positions about whether Petitioner's group is eligible for visas – or when
15 that group is likely to become eligible.

16 If it is clear that Petitioner's group is eligible for visas, or is about to become
17 eligible for visas, the Court will issue a ruling on the motion for summary judgment
18 that is pending now.

19 If it is not clear whether Petitioner's group is eligible for visas, then on
20 February 26, 2008, at 1:30 p.m., the Court will conduct a case management
21 conference to plan the next stages of this litigation.

22
23 IT IS SO ORDERED.

24 Dated: December 10, 2007

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26 
27 _____
28 WAYNE D. BRAZIL
United States Magistrate Judge

1
2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF CALIFORNIA

5 CHEN,

6 Petitioner,

7 v.

8 CHERTOFF, et al,

9 Respondents.
10 _____/

Case Number: CV07-02188 WDB

CERTIFICATE OF SERVICE

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on December 11, 2007, I SERVED a true and correct copy of the attached Order re Cross-
14 Motions for Summary Judgment, by placing said copy in a postage paid envelope addressed to the
15 person hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into
16 an inter-office delivery receptacle located in the Clerk's office.

16 Qin Chen
17 2246 Magnolia Bridge
18 San Ramon, CA 94582

19 Dated: December 11, 2007



Richard W. Wieking, Clerk
By: Hera Kim, Deputy Clerk